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Melville, NY 11747			ART UNIT	PAPER NUMBER
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/583,792	LEE ET AL.	
	Examiner	Art Unit	
	STEVEN KELLEY	2617	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) Responsive to communication(s) filed on 02-16-10.
 2a) This action is **FINAL**. 2b) This action is non-final.
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4) Claim(s) 1-14 is/are pending in the application.
 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
 5) Claim(s) _____ is/are allowed.
 6) Claim(s) 1-14 is/are rejected.
 7) Claim(s) _____ is/are objected to.
 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9) The specification is objected to by the Examiner.
 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) <input type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413)
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	Paper No(s)/Mail Date. _____ .
3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____ .	5) <input type="checkbox"/> Notice of Informal Patent Application
	6) <input type="checkbox"/> Other: _____ .

Claim Rejections - 35 USC § 112

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 2 and 8-10 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The language of claim 2, which recites “wherein the data packets classified by the classifier are data packets that are *determined as admitted by the admission controller* based on their first priorities after being classified by the classifier”, is confusing and or inaccurate as the use of “are determined” suggests or indicates that the “admission” has already happened (in time, i.e. “has been determined” or recited “are determined”) before the classifying, which is not the case. The language of claim 8 which recites “providing second priorities to the data packets based on characteristics of the data packets provided the first priorities independently of the QoS policy” is unclear. Additionally, this same language appears contradictory, as it is recited that the first priorities are based on QoS and that the second priorities are based on the first priorities (which is QoS) but independently of QoS”. Therefore, this language appears confusing as the second priorities are based on QoS, yet independent of QoS.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 1-11 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent 7,461,164 to Edwards et al. (hereinafter “Edwards”) in view of the IEEE article from September 2000 entitled “IP QoS Delivery in a Broadband Wireless Local Loop: MAC Protocol Definition and Performance Evaluation” by Baiocchi et al. (hereinafter “the MAC Protocol article”).

Regarding claim 1, Edwards teaches an OFDMA-TDMA (Orthogonal Frequency Division Multiplex-Time Division Multiple Access) based wireless Internet terminal comprising: a QoS profile storing information about a QoS policy (see QoS module 58 as shown in Fig. 7 and described in columns 10-11, which “stores QoS policies”, as recited); a first module_(see software-based MAC component 24A), comprising: classifier for classifying data packets to be transmitted according to the QoS policy (see QoS module 58, which “classifies”, as recited); a first priority controller that gives first priorities to the classified data packets according to the QoS policy (see software-based MAC component 24A and see column 9, lines 32-35, which teach that the “software-based MAC component 24A also has a number of virtual queues to assist QoS

functions"); and a second module (see hardware-based MAC component 24B), comprising a second priority controller for determining priorities of the PDUs according to characteristics of the data packets (see hardware-based MAC component 24B, as shown in Fig. 6 which includes transmit logic 34 and transmit queues 36 and 38, where higher priority may be given to one of the queues (as taught in column 9, lines 17-20, where the "characteristics of the data packets" may be time-critical packets as described in column 2, lines 35-41, policies included in command structures from the software-based MAC component 24A (such as shown in Figs. 9-10) or the "prioritization scheme" taught in column 11, lines 1-3); and wherein the second module arranges the PDUs in an allocated bandwidth to transmit the PDUs (see hardware-based MAC component 24B, as shown in Fig. 6 which transmits packets in allocated bandwidth, as recited).

Although Edwards teaches generating "packets" (which could be considered as a "protocol data unit" or PDU), Edwards does not explicitly teach a "PDU maker for generating PDUs from the data packets given the first priorities" as recited, and also does not explicitly teach a "OFDMA-TDMA (Orthogonal Frequency Division Multiplex--Time Division Multiple Access) based wireless Internet terminal", as recited.

The MAC protocol article (which is for an "OFDMA-TDMA (Orthogonal Frequency Division Multiplex--Time Division Multiple Access) based wireless Internet terminal", as recited) teaches methods of scheduling packets for transmission. As shown in Fig. 3 of the MAC protocol article, packet traffic related functions include "classifying" the packets into "guaranteed bandwidth" or "best effort" queues and providing the packets from

these queues to a MAC scheduler which uses a MAC fair scheduling algorithm. As described in sections B and C on page 1612 of the MAC protocol article (and shown in Fig. 6 on page 1613), the MAC signaling section and MAC fair scheduling algorithm sections teach the use of MAC PDUs for scheduling and transmission purposes, where the MAC scheduler “generates PDUs from the packets given priorities”, as recited.

Therefore, as both Edwards and the MAC protocol article teach packet QoS features implemented in the MAC layer, it would have been obvious to one of ordinary skill in the art to modify Edwards with the ability to generate PDUs from the prioritized data packets (as taught by the MAC protocol article), in order to properly schedule packets for transmission, as is conventional.

Regarding claim 2, which recites “wherein the first module further includes an admission controller that determines admission or discard of the data packets classified by the classifier, and wherein the data packets classified by the classifier are data packets that are determined as admitted by the admission controller after being classified by the classifier”, any packet which is stored in the queues after being classified (in either Edwards or the MAC article) must have had its’ “admission determined”, as recited. Therefore, as the software-based MAC component 24A inherently performs this function (of admission), it would have been obvious to include an “admission controller” in the software-based MAC component 24A. See also section C on page 1612 of the MAC protocol article, the fair scheduling algorithm “gives GB

priority over BE packets”, which for scheduling purposes based on available bandwidth results in dropping (or recited “determining discard”) of classified packets.

Regarding claim 3, which recites “wherein the first module further includes a QoS queue storing the data packets classified by the classifier, and a priority queue storing data packets admitted by the admission controller based on their first priorities”, see column 9, lines 32-35, of Edwards, which teaches that the “software-based MAC component 24A also has a number of virtual queues to assist QoS functions”.

Regarding the recited “priority queue”, see transmit queues 36 and 38 (as shown in Figs. 6 and 8), which store packets based on priority, as recited.

Regarding claim 4, which recites “wherein the first module is constructed in a MAC layer by software”, see MAC S/W component 24A in Edwards, which is constructed, as recited.

Regarding claim 5, which recites “wherein the second module includes a sorting queue sequentially storing the PDUs based on priorities assigned by the second priority controller”, see transmit queues 36 and 38 (as shown in Figs. 6 and 8), which store packets based on priority, as recited.

Regarding claim 6, which recites “wherein the PDUs are MAC PDUs, and the second priority controller gives the second priorities to the MAC PDUS in the order of an ACK packet, a management message packet and a user data packet independently from the QoS profile”, see column 9, lines 20-23, which teach that packets from “queues 36 and 38 can be used to separate packets that should be transmitted in an announcement traffic indication message (ATIM) period from those that should not”,

which is a “management message packet”, as recited. See also column 16, lines 16-24 which teaches that “MAC H/W component 24B is used to find time to transmit ACK packets”. Therefore, as Edwards also teaches that the second prioritizing of packets (from queues 36 and 38) can also be based on other factors such as time-sensitive packets and ACK packets, it would have been obvious to one of ordinary skill in the art to prioritize the packets (or MAC PDUs as modified by the MAC protocol article) in the recited order, as time sensitive packets should be prioritized over user data packets, as is conventional.

Regarding claim 7, which recites “wherein the second module is constructed in a MAC layer by hardware”, see MAC H/W component 24B in Edwards, which is constructed, as recited.

Regarding claim 8, Edwards teaches a packet processing method in a wireless Internet terminal, comprising: classifying and storing data packets based on a QoS policy (see column 9, lines 32-35, which teach that the “software-based MAC component 24A also has a number of virtual queues to assist QoS functions”); providing first priorities to the data packets classified based on the QoS policy (the “first priorities” are the QoS priorities); storing the data packets given the first priorities in a queue and sequentially outputting the data packets based on their first priorities (packets stored in higher QoS virtual queues would be sequentially output, as recited); providing second priorities to the data packets based on characteristics of the data packets provided the first priorities independently of the QoS policy (see hardware-based MAC component

24B, as shown in Fig. 6 which includes transmit logic 34 and transmit queues 36 and 38, where higher priority may be given to one of the queues (as taught in column 9, lines 17-20), where the second priorities may be time-critical packets as described in column 2, lines 35-41, or policies included in command structures from the software-based MAC component 24A (such as shown in Figs. 9-10) or the “prioritization scheme” taught in column 11, lines 1-3, which are not QoS policies, as recited); and sequentially sorting the data packets based on the second priorities to arrange the data packets in an allocated bandwidth (see hardware-based MAC component 24B, as shown in Fig. 6 which arranges packets in allocated bandwidth, as recited).

Although Edwards teaches QoS priorities, the MAC protocol article is added for completeness.

As shown in Fig. 3 of the MAC protocol article, packet traffic related functions include “classifying” the packets into “guaranteed bandwidth” or “best effort” queues, which are “QoS policies and priorities”, as recited. Additionally, the MAC protocol article teaches providing the packets from these queues to a MAC scheduler which uses a MAC fair scheduling algorithm and as described in section C on page 1612 of the MAC protocol article, the fair scheduling algorithm “gives GB priority over BE packets”, which for scheduling purposes based on available bandwidth results in dropping of classified packets.

Therefore, as both Edwards and the MAC protocol article teach packet QoS features implemented in the MAC layer, it would have been obvious to one of ordinary skill in the art to modify Edwards with the ability to classify and store packets based on

QoS policies and priorities (as taught by the MAC protocol article), in order to provide for the most comprehensive scheduling and transmission of packets based on QoS factors as is conventional.

Regarding claim 9, which recites “further comprising determining admission or discard of the classified data packets”, any packet which is stored in a queue after being classified (in either Edwards or the MAC article) must have had its’ “admission determined”, as recited. See also section C on page 1612 of the MAC protocol article, the fair scheduling algorithm “gives GB priority over BE packets”, which for scheduling purposes based on available bandwidth results in dropping (or recited “determining discard”) of classified packets.

Regarding claim 10, which recites “wherein the classifying and storing data packets, the determining admission or discard of the classified data packets and the providing of the first priorities to the classified data packets are executed by software, and the provided second priorities to the data packets and the arranging the data packets are executed by hardware”, as described above, the MAC S/W component 24A and MAC H/W component 24B in Edwards, perform the recited functions.

Regarding claim 11, Edwards teaches a recording medium storing a program used for a wireless terminal that gives first priorities to data packets based on a QoS policy, gives second priorities to the data packets based on packet information of the data packets given the first priorities and uplink-transmits the data packets, the recording

medium comprising (see column 3, lines 58-67, which teach storing instructions on a computer readable medium, as recited): storing the QoS policy as a QoS profile (see QoS module 58 as shown in Fig. 7 and described in columns 10-11, which “stores QoS policies as a profile”, as recited); classifying and storing the data packets based on the QoS policy (see column 9, lines 32-35, which teach that the “software-based MAC component 24A also has a number of virtual queues to assist QoS functions”); determining admission or discard of the classified data packets (inherently any packet stored in the queues must have had its “admission determined”, as recited); and providing the first priorities to data packets allowed to be admitted according to the QoS policy (see hardware-based MAC component 24B which processes the packets received from the software-based MAC component 24A, with QoS commands from the software-based MAC component 24A (see also Figs. 6 and 11)).

Although the recited features such as “classifying” and “determining admission or discard of the classified data packets” must inherently be present in Edwards (although not explicitly mentioned), the MAC protocol article is added for completeness.

As shown in Fig. 3 of the MAC protocol article, packet traffic related functions include “classifying” the packets into “guaranteed bandwidth” or “best effort” queues and providing the packets from these queues to a MAC scheduler which uses a MAC fair scheduling algorithm. As described in section C on page 1612 of the MAC protocol article, the fair scheduling algorithm “gives GB priority over BE packets”, which for scheduling purposes based on available bandwidth results in dropping (or recited “determining discard”) of classified packets. Therefore, the MAC protocol article

explicitly teaches “classifying packets” (as shown by storing packets into GB or BE queues) and “determining admission or discard of the classified data packets” using a MAC scheduler employing a fair scheduling algorithm.

Therefore, as both Edwards and the MAC protocol article teach packet QoS features implemented in the MAC layer, it would have been obvious to one of ordinary skill in the art to modify Edwards with the ability to classify and determine admission or discard of the classified data packets (as taught by the MAC protocol article), in order to provide for the most comprehensive scheduling and transmission of packets based on both QoS factors and scheduling factors, as taught in the Summary of the Invention section in Edwards.

Regarding claims 12-14, which recite “wherein the classified data packets are admitted or discarded according to at least one of an available traffic state and the QoS policy”, as described above in the rejection of claim 11, the MAC protocol article teaches (as described in section C on page 1612) that the fair scheduling algorithm “gives GB priority over BE packets”. Therefore, the MAC fair scheduling algorithm which determines the admission or discarding of packets based on “guaranteed bandwidth” and “best effort”, is based on “available traffic state and the QoS policy”, as recited.

Response to Arguments

5. Applicant's arguments filed 2-16-10 have been fully considered but they are not persuasive. Regarding claim 1, Applicant sets forth (on page 6 of the Remarks) that "Edwards operates on packets and does not operate on PDUs" and "Although Baiocchi teaches generating PDU's, the combination would only produce a system that continues to operate Edwards' hardware-based and software-based MAC components on packets". As stated in the First Office Action, Baiocchi is added to explicitly show a "PDU maker" as recited, as the hardware-based MAC component of Edwards refers to the data units in this component as "packets". It is known however, that data packets produced in the MAC layer (2) are conventionally also referred to as "PDUs", so the modification of Edwards with Baiocchi (is proper and for explicit use of the term "PDU") would make and operate on PDUs, as recited (and would not be restricted only to "packet" operations as Applicant contends). It is also noted that claims 8 and 11 (of the instant application) use the word "packets" throughout (like Edwards), indicating that "packets" and "PDUs" are equivalent terms. Regarding claim 8, Applicant sets forth (on page 6 of the Remarks) that "Edwards does not specifically teach or disclose that second priorities are provided data packets sequentially output according to the first priorities". It is first noted that this argument (which appears to be similar to the language used in the claim amendments) is unclear and/or confusing (as described in the section 112 rejection). Additionally, as set forth above in the rejection of claim 8, the "second priorities" may be time-critical priorities/packets as described in column 2, lines 35-41, or policies/priorities included in command structures from the software-based

MAC component 24A (such as shown in Figs. 9-10) or the “prioritization scheme” taught in column 11, lines 1-3, where the “priorities provided from the software-based MAC component” are the “first priorities”. Therefore, the “second priorities” of Edwards are “based on characteristics of the first priorities”, as recited. Regarding claim 11, Applicant sets forth arguments (on page 6 of the Remarks) why Edwards does not inherently teach the recited “determining admission or discard of packets.” The First Office Action however, stated that while this feature may be inherent in Edwards, the secondary reference (the MAC protocol article) is also added to teach this feature. Applicant’s arguments do not address the MAC protocol article’s teachings of “determining admission or discard of packets.” Therefore, Applicant’s arguments are not persuasive.

Conclusion

6. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the

shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to STEVEN KELLEY whose telephone number is (571) 272-5652. The examiner can normally be reached on Monday-Friday, 9AM to 5PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lester Kincaid can be reached on (571) 272-7922. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/SSK/

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